

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

MARCUS L. PURNELL,	§	
	§	
v.	§	CIVIL NO. 4:21-CV-811-SDJ-KPJ
	§	
DENTON POLICE DEPARTMENT	§	

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On December 20, 2022, the report of the Magistrate Judge (the “Report”), (Dkt. #20), was entered containing proposed findings of fact and recommendations that the City of Denton, Texas’s (the “City of Denton”) Motion to Dismiss (the “City of Denton’s Motion”), (Dkt. #15), be denied as moot because the City of Denton was not a named defendant and thus not a party to the suit. *See* Dkt. #20 at 4–5 (collecting cases). The Court further recommended Plaintiff’s claims against the sole named Defendant Denton Police Department (the “Denton Police Department”) be dismissed with prejudice as Denton Police Department is a non-jural entity. *See* Dkt. #20 at 6 (collecting cases).

On January 13, 2023, Plaintiff filed a Motion for Extension of Time to File Objections, (Dkt. #22), wherein Plaintiff asserts “if Denton Police Department can[']t be sued could I have them 2 officers that arrested me [on] June 26, 2021 [sic] They w[ere] the ones that brutal[ly] attacked me. I would like to continue this matter with this 1983 civil su[it].” *Id.* at 1. On January 16, 2023, the Magistrate Judge granted

the Motion for Extension of Time to File Objections, (Dkt. #22). *See* Dkt. #24. On February 6, 2023, Plaintiff filed Objections, (Dkt. #25), asserting:

[Plaintiff] do[es] not [f]eel the Recommendation the Court made on my behalf which was dismissed with prejudice be Denied as Moot. When [Defendants] have numerous lawsuits against them for misuse of power as well as police brutality[,] I also understand that my record isn't free from criminal activity[,] but due to the injuries I received I was . . . not offered medical help

Id. at 1. Plaintiff further asserts, “Well if convicted and couldn[']t sue the Denton County [P]olice Dep[artment]. Could I continue [this lawsuit] with the 2 [police officers] that got suspended for this matter. Because one got suspended indefinitely and the other got 5 days suspens[ion].” *Id.* Plaintiff asserts these police officers that he wishes to name as Defendants are “L. Pizana # 1163” and “T. Maloney #1144”. *Id.*


The Court has conducted a *de novo* review of the Objections and is of the opinion that the findings and conclusions of the Magistrate Judge are generally correct, and the Objection is without merit as to the ultimate findings of the Magistrate Judge. Because the City of Denton is not a party to this case it had no standing to file a motion. For this reason, the City’s motion must be dismissed for want of jurisdiction, rather than denied. Accordingly, with this modification, the Magistrate Judge’s report is **ADOPTED** as the findings and conclusions of the Court and Plaintiff’s Objections, (Dkt. #25), are **OVERRULED**.

In his Objections, Plaintiff suggests that he intends to name additional defendants to this suit, although he has not yet attempted to file an amended complaint or sought leave of the Court to do so. Plaintiff is advised that new defendants may be brought into this suit only through an amended complaint.

It is therefore ORDERED that:

1. The City of Denton's Motion, (Dkt. #15), is **DISMISSED for lack of jurisdiction**;
2. Plaintiff's claims against the Denton Police Department are **DISMISSED**; and
3. Plaintiff is **GRANTED** leave to amend his complaint. Any amended complaint must be filed within fourteen (14) days of receipt of this Memorandum Adopting the Report and Recommendation. The amended complaint, if handwritten, must be clear and legible. Plaintiff is advised that he must plead all factual allegations that he seeks to raise, including any previous allegations that he seeks to reassert, in his amended complaint.

So ORDERED and SIGNED this 28th day of March, 2023.


SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE